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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,932	06/26/2003	Ho Gab Yang	7989.009.00-US	3429

7590 06/02/2004
MCKENNA LONG & ALDRIDGE LLP
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Washington, DC 20006

EXAMINER

LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,932

Applicant(s)

YANG ET AL.

Examiner

Philip H Leung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-26-2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The drawings were received on 6-26-2003. These drawings are acceptable.
2. Claims 14-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 3, 20 and 21 of U.S. Patent No. 6,610,970. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to A tray assembly for a microwave oven incorporating a toaster, comprising: a microwave cavity; a toaster provided adjacent to the microwave cavity; a tray support provided inside the toaster; and at least one tray fastened on top of the tray support for holding a food item, the tray comprising at least one elevating bracket for maintaining a predetermined distance between the tray and the tray support, wherein the elevating bracket comprises at least one extension extended downward, and wherein the tray support comprises a first plurality of fastening slits for accommodating the at least one extension" (see claims 3 and 21 of the patent). There are no substantial structural differences except for different wordings and terminologies.
3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Back (US 6,610,970).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Back shows “a microwave oven incorporating a toaster with a tray assembly comprising a microwave cavity 22; a toaster 30 arranged adjacent to the microwave cavity; a tray support 70 provided inside the toaster; at least one tray 74 provided on top of the tray support for holding a food item, the tray comprising at least one elevating bracket 74b for maintaining a predetermined distance between the tray and the tray support; and a support wall (shown in Figures 4 and 6) provided at a front end of the tray for supporting a front lower portion of the food item so as to stably position the food item at an optimal location for toasting” (claim 1)” and “the elevating bracket 74b comprises at least one extension (fastening hooks 74a) extended downward, and wherein the tray support comprises a first plurality of fastening slits 70a for

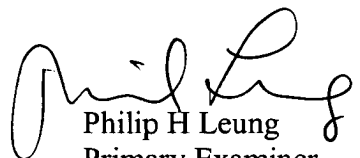
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accommodating the at least one extension" (claim 14) (see Figures 2-6 and col. 2, line 61 – col. 6, line 36). By comparing Figure 3 with the Figure 3 of Back, it can be seen that Back shows a toaster for a microwave oven having identical features as shown and claimed, such as bushing 72, connecting lever 76, moving slot 54, spring 79, toaster door 40, heating plate 80 and rear flange 75, etc.. Figures 4 and 6 of Back clearly shows every feature and structure of the tray and tray support as disclosed in Figures 4 and 5 and claimed by the applicant. Applicant is respectfully reminded that a clear line of demarcation between this application and the reference patent must be maintained (see Figures 2-8 and col. 3, line 30 – col. 6, line 23).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (703) 308-1710.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on (703) 308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
5-28-2004